

# Statement

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REMARKS OF

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INDUSTRY CANADA

TO THE

FIFTH INTERNATIONAL CONFERENCE

ON CONSUMER LAW

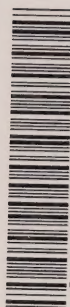
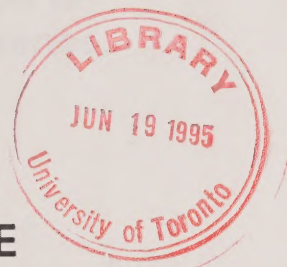
OSGOODE HALL

TORONTO, ONTARIO, MAY 25, 1995

AN EVOLVING CONSUMER PROTECTION

FRAMEWORK FOR THE

CONTEMPORARY MARKETPLACE



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## **INTRODUCTION**

Ladies and gentlemen. On behalf of Canada's Minister of Industry, the Honourable John Manley, I would like to welcome you all to this Fifth International Conference on Consumer Law, and extend to you his and my own wishes for a successful and productive meeting. Industry Canada is proud to be one of the major sponsors of this Conference.

## **CONSUMER INTERESTS ARE IMPORTANT**

As stated in the new *Department of Industry Act*, protection of the consumer interest is an important part of the Minister of Industry's responsibilities. Minister Manley takes his consumer mandate very seriously. The solid endorsement that he gave this past March, on World Consumer Rights Day, to the consumer rights movement and the United Nations Guidelines for Consumer Protection, demonstrates his commitment to consumer interests.

Likewise, Industry Canada's commitment to the consumer remains strong. Departmental funding for consumer interest programs will be maintained at an annual level of \$1 million through the 1997-98 fiscal year -- at a time when most other similar programs are being eliminated or drastically reduced. The former Bureau of Consumer Policy, now the Consumer Affairs Office, will continue to perform a lead role in promoting the interests of Canadian consumers. It will also continue to ensure that consumer groups have efficient and effective access to information, and that consumer input is

provided at early stages of the decision making processes of government and industry.

Consumer interests are important to me as well, as Director of Investigation and Research (DIR). Why? First of all, because of my firm belief in fair and efficient markets and the fundamental role that consumers play in the market. At times, some have suggested that the DIR and the Competition Bureau are interested only in business issues and not consumer issues. That perception is wrong. The *Competition Act* exists to foster competitive markets but competition is not an end in itself. The *Competition Act* includes several provisions which are very important to consumers. The provisions that first come to mind for most people are those measures directed at misleading advertising and deceptive marketing practices. Just as important is the fact that the *Act* makes a significant contribution to consumer welfare in a broader sense, by promoting competitive markets. Competitive markets generate a host of benefits, not the least of which are competitive prices and improved product choices. Ensuring efficiency and vigorous competition for goods and services in markets across the country is definitely in consumers' interests.

Such things as mergers, deceptive and misleading marketing practices, abuse of dominance, bid-rigging, and conspiracy to fix prices all can have an impact upon consumers, and all fall within the purview of the *Competition Act*.



I am also particularly interested in consumer issues as a result of recent changes within Industry Canada. As a result of the sweeping government-wide program review exercise which has just been completed, a new departmental structure at Industry Canada will transfer responsibility for the Consumer Products Branch from the former Bureau of Consumer Affairs to the Director of Investigation and Research under the *Competition Act*. The Bureau of Competition Policy is the organization which helps me carry out my enforcement responsibilities under the *Competition Act*. The Consumer Products Branch enforces and administers legislation that protects and assists consumers by promoting fairness in the marketplace: the *Consumer Packaging and Labelling Act*, the *Textiles Labelling Act*, and the *Precious Metals Marking Act*.

Legislative changes will be required before we can fully integrate and combine our activities. For the time being, until the affected pieces of legislation have been amended (which I hope can be done as part of the current process of amending the *Competition Act*), the two organizations are being held separate. Although reporting to me, the Consumer Products Branch is not part of the Competition Bureau. There will be no co-mingling of my responsibilities under the *Competition Act* and my responsibilities with respect to the labelling legislation. This separation is necessary to avoid any real or potential conflict that might arise due to the overlap in the respective mandates of the *Competition Act* and the consumer protection legislation. In addition, the stringent confidentiality provisions of the *Competition Act* require it.



In the long run, however, once the appropriate legislative changes have been made, the union will bring some important benefits to Canada. Many other jurisdictions have seen a benefit in combining the competition and consumer protection activities within a single organization. It is a modern framework approach, bringing together in one place, tools that all types of consumers need to participate effectively in the marketplace. It will combine those resources responsible for fair and open competition in the marketplace. It provides a tangible link between consumer protection and the benefits that consumers, among other market participants, gain from a fair and competitive marketplace. And it will undoubtedly lead to a number of synergies. The combination will allow for increased effectiveness in terms of unified objectives and strategies over a broad range of marketplace activities, and improved fairness in the delivery and enforcement of the two programs, particularly in the areas of advertising and labelling, where they deal with similar issues. It should reduce some of the regulatory burden for the business community, and could also lead to enforcement efficiencies. I am excited by the opportunities ahead. I believe this new arrangement holds great promise for the future.

Today, given this new institutional framework, I will focus my remarks on how competition law as framework law can play a key role in the evolving consumer protection framework needed for the contemporary marketplace.

## THE IMPORTANCE OF FRAMEWORK LAW

As someone with a marketplace mandate, I believe firmly that the existence of fair international and domestic markets, free and competitive, is a fundamental good, a good that benefits all types of consumers -- providing better prices, better choices, better products and better information. But in order for consumers to reap the benefits of competitive markets you need at least two things. Firstly, you need sound framework law like the *Competition Act*.

- Framework law that is strong, balanced, and flexible enough to deal with this new marketplace in a timely and effective fashion.
- Framework law that establishes a set of parameters for the marketplace by defining unlawful conduct, conduct that will be considered an unlawful abuse of the marketplace.
- Framework law that, having established these parameters, then allows the marketplace to operate freely.

Secondly, you need to have consumers who are determined that the marketplace must deliver what it should. Informed consumers. Consumers with high expectations. Demanding consumers who will insist on their rights -- who will make producers continuously earn their place in the market.



As an advocate of competition, I would further argue that competition law has a significant role to play in bringing about this outcome. The role of framework competition law is especially significant at a time when government resources are spread very thinly, and when many governments are re-thinking interventionist policies in general and consumer policies in particular.

The rivalry of competitive markets compels producers to be innovative, and to be acutely aware of what consumers of their products require. A business' presence in the market must be constantly earned; there are no entitlements. When markets are competitive, in addition to better products and services, informed consumers can have greater power. They are more inclined to take action on their own behalf, and find it easier to do so. Particularly in the age of the Internet, a healthy marketplace should increase consumer power by making it easier for consumers to communicate, to organize, to make their voices heard, and to use their market vote. There has already been evidence that these things are becoming a reality: in the United States, with resistance to the "clipper chip" or Internet advertisers getting flamed and in Canada, where cable TV consumers have been able to organize quite effectively.

## **THE NEW MARKETPLACE**

Let me take a moment to illustrate why I believe it is important to consider "consumers" in the broadest sense in the new marketplace. For example, when we prosecute a tire



company for making false performance claims about one of its products -- say, a winter traction or minimum mileage claim -- the beneficiary is not only the individual consumer buying a new set of tires for the family car, it is also the taxi company buying tires for a whole fleet of cabs. If we speak of the "beneficiaries" of this enforcement action, we cover an even broader spectrum. Not only should we include the direct consumers, individual and business, buying the product at issue but also in this case we would include the competing honest tire producers whose businesses suffer from a loss of customers who relied on the false claims. It is this broad reach of framework law that provides such marketplace-wide opportunities.

In the contemporary world, competition and the efficient functioning of markets have more bearing than ever before on the consumer interest. The marketplace is changing -- changing significantly -- and the change is largely technology driven. We are now living in an information and technological age; in a context of more or less constant change. Trade liberalization and the communications revolution have globalized markets. These developments have profound implications for society generally and for consumers specifically. Markets are borderless, anonymous, constantly evolving and highly contestable.

One of the most notable aspects of the birth of the global marketplace is the evolution of the information highway. Consumers have a tremendous interest in the accessibility, degree of choice and cost of telecommunications services.



The way in which the information highway is constituted is a consumer issue of supreme importance. We can let the consumer get highjacked on the information highway.

The February 1995, G-7 Ministerial Conference on the Information Society sketched the way that the information highway might develop internationally. The Conference concluded that the information society compels traditional organizational structures to become more flexible, more participatory and more decentralized. It argued that the regulatory framework for the information highway should put the user first, while meeting a variety of objectives: universality of access, choice, high quality service and affordable prices.

In Canada, the CRTC has been conducting hearings on the development of the information highway in this country. I have argued before the CRTC that the greatest benefit to consumers would derive from genuine competition among service providers, not just the appearance of competition. The current regulatory framework should be changed to one which minimizes the extent of regulation of the cable television and broadcasting industries and facilitates an open entry, market-driven transition to competition in the communications sector.

The technological and communications capabilities that characterize the contemporary environment are changing the way in which consumers participate in the marketplace. For example, cross-border marketing, shopping and advertising are



becoming routine activities. Interactive television, electronic mail order catalogues, "infomercials" and home shopping are transforming the way goods are advertised and delivered domestically and across borders. Whether we are talking about product, service or financial markets, consumer protection must take its place in an economic and electronic environment that is increasingly international in scope.

The traditional geographical definition of the market has become increasingly irrelevant to consumers, who are turning more and more to cross border suppliers, whether in their purchase of shoes from a catalogue or of financial services from a stock market on the other side of the world.

## **GOVERNMENT HAS TO ADJUST TO THIS NEW ENVIRONMENT\NEW TOOLS**

This new environment offers many consumer benefits including greater product offerings. But the bad news is that it also brings consumer risk. There are greater opportunities for abuse, deceit and outright fraud. The particular vulnerability of some consumers -- the elderly, the poor, the illiterate -- has increased as markets have become more sophisticated. In this electronic environment, the regulation of advertising and marketing practices is made more difficult. Many of the tools and concepts that have been relied on in the past to deal with these abuses in the marketplace are increasingly ineffective or even obsolete.

For example, in recent years high tech telemarketing fraud has mushroomed. Enforcement and consumer protection in this field can be extremely complex, particularly when perpetrators deliberately target victims across borders, thus making it more difficult for law enforcement officers to take action. Law enforcement officials are facing new and difficult issues in this borderless electronic marketplace. Who has jurisdiction? Where is the offence taking place? How do we identify the victims? How can we get the evidence?

On the question of telemarketing, as I mentioned earlier, a process of consultation on possible amendments to the *Competition Act* has been initiated, and one of the key areas we are looking at is how to strengthen our enforcement capabilities regarding fraudulent telemarketing and deceptive mail fraud. As this is a relatively new form of economic activity, Minister Manley has indicated his desire to have the House of Commons Standing Committee on Industry consider these issues and report later this year on proposals for amendments in this area. The scope of the amendments exercise will include a number of other matters, including changes to the way in which misleading advertising is dealt with under the *Competition Act*.

The new tools required to meet the challenges of this new environment, be they enforcement tools or inter-agency co-operation or information products, have to be more flexible to target, with greater precision and in a timely fashion, conduct which disrupts the marketplace, conduct which is abusive of the marketplace and its participants. The



information products will have to be able to zero in on target groups to achieve their maximum effect.

Conversely, violations of the principles of free and fair competition exert a demonstrable negative influence on consumers. There is a particular need to target criminal marketing practices. Criminals do not abide by marketplace rules, and there has been an increased criminalization of otherwise legitimate marketing practices. I mentioned telemarketing fraud earlier, but that is only one sphere of activity. The technological opportunities for criminals to prey on consumers will multiply as our reliance on telecommunications grows. We need to guard against this; to raise barriers to entry for criminals.

Consumer protection mechanisms will help to ensure that the benefits of new technology are passed on to consumers, by giving consumers better product information and greater ease of access. And, as the telecommunications revolution becomes more and more a reality, there will be more and more need for new international responsibilities to protect consumers.

These responsibilities will of necessity have to be shared. Law enforcement agencies will have to be mobilized to work in concert. The support of legitimate business, the public sector and individual consumers will be necessary as well -- we all have to work together to fight predatory practices that victimize consumers.

A better environment for consumers is one of the objectives of contemporary policy development. Framework law and regulatory infrastructure are evolving to meet the demands of the age of global markets and telecommunications. Consumer policy is also undergoing a transformation to meet these new challenges. A comprehensive approach to consumer protection is already beginning to take shape. This new framework will include many elements:

- 1) There will be a greater reliance on market forces, with interventions limited to instances of market failure or situations where government intervenes to prevent an anti-competitive outcome. For example, the Director's intervention under the *Competition Act* in the airline and airline computer reservation industries has maintained competition in the domestic airline industry in Canada. With two national air carriers, open skies and strategic alliances among airline partners, Canadian consumers today enjoy more choice and competitive pricing for airline travel. Targeted interventions such as these are where framework law has the most impact.
- 2) Where appropriate, there will be greater reliance on voluntary codes to achieve legislative objectives. Codes will be prepared by industry and consumer groups, and will include effective redress mechanisms and sanctions.
- 3) The statutory and regulatory framework for consumer protection will be improved and harmonized, to provide



increased deterrence and more efficient enforcement and prosecutorial action. Globalization means that harmonization is needed in order to allow consumers to play their role, to exercise their choices in an informed and effective manner. A good example of this phenomenon, and one which I am following closely, is the proposed U.S. Federal Trade Commission rule to ban numerous deceptive or abusive telemarketing sales practices, and to prohibit credit card laundering and other forms of assistance to deceptive telemarketers. It would be unfortunate if the FTC efforts simply resulted in telemarketers not adhering to the new rules when calling Canadian consumers. Which also leads me to the fourth point.

4) Inter-agency co-operation in enforcement and other areas will be improved, at both the national and international level. There will be better and faster information exchange among enforcement agencies. Reliable and readily accessible information on ongoing illicit practices could be provided through linkages of national and international databases. There are several recent examples of the way this trend is developing:

- The Thomas Liquidation case where, for the first time, an international extradition agreement was used to cause an American corporation and individual to attend a Canadian criminal court and answer charges under the *Competition Act*. American-based Thomas Liquidation Inc., pleaded guilty and was fined \$130,000 in the Ontario Provincial Court.

- In September 1994, the Bureau of Competition Policy and the U.S. Federal Trade Commission held their first-ever joint session, to explore ways in which Canadian and American agencies could expand co-ordinated cross-border action against deceptive and fraudulent telemarketing practices.
- The OECD's International Marketing Supervision Network was set up in 1992 as a major multilateral initiative to encourage information exchange to prevent cross-border marketing malpractice, protect consumers, and ensure fairness in the global marketplace. The Bureau of Competition Policy is an active member of the IMSN.
- Canada's "Project Phonebuster" is a co-ordinated effort against fraudulent telemarketing practices, conducted jointly by a number of Canadian agencies representing various jurisdictions. These include the Ontario Provincial Police and the Metropolitan Toronto Police Force, the Bureau of Competition Policy, the Royal Canadian Mounted Police, and the Ontario Ministry of Consumer and Commercial Relations. "Project Phonebuster" has already begun to yield impressive results, and has severely inhibited illegal telemarketing in Canada. Several organizations have been broken up, and key individuals are now before the courts.

Along with greater regulatory harmonization, these types of co-operative law enforcement activities must become more and more common in the future. The global economy and the



global marketplace are creating an environment where enforcement agencies have to work together to ensure healthy and competitive markets and protection of the consumer interest.

5) More emphasis will be placed on prevention, and on the timely dissemination of information to the public. Prevention is often the most efficient way to combat illegal marketing practices by empowering consumers to protect themselves. The Bureau of Competition Policy is using information more and more frequently as a preventative tool. Our Public Education Initiative provides clear and simple explanations of competition law, on a timely basis, to small and medium sized businesses and consumers. For example, I firmly believe that the Bureau's telemarketing insert, which was sent out last year with old age security cheques, did a lot more to alert elderly consumers than a prosecution would have. I have also recently asked the CRTC to order long distance telephone companies it regulates to include with their billing statements a consumer message from my office. The message provides practical consumer tips to avoid deception, which has appeared in the marketing practices of some service providers in this newly competitive market. It is hoped that better informed consumers will feel more comfortable in shopping for long distance. Accordingly, the proposed message is aimed at promoting competition and protecting consumers in this new, and unfamiliar, competitive market. The CRTC's decision is pending.



I have concentrated on the evolving consumer protection framework, but there is also a larger, continuing need to search for other effective mechanisms to foster fair, efficient and competitive markets.

## **CONCLUSION**

I believe that the world is developing the innovative mechanisms that will be needed in this information age to foster the consumer interest. Certainly this is the direction that Canada is taking, both domestically and internationally.

Consumers, consumer organizations, business and government are faced with a common challenge: to find the best ways to ensure that consumer interests are protected, in a manner that is practical and affordable in the current economic environment.

Despite the present context of continual change, basic consumer rights remain constant. These include the right to safety, to choice, to redress, to be informed and to be heard. The desirability of free, fair and efficient markets is another constant. The idea that one must be sacrificed for the benefit of the other is incorrect and obsolete. The measure of our success will be whether or not we are able to implement the policies, appropriate to the times, that will foster both consumer rights and fair and efficient markets, and enable them to be mutually reinforcing. This Conference on Consumer Law will take us further toward that goal. Thank you.